

DATE: August 24, 2007

TO: Office of Drinking Water Staff

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Office of Drinking Water

FROM: Michael Williams, Small Systems Coordinator
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Division of Technical Services

SUBJECT: PERMITS & PROJECT REVIEW – Waterworks Business Operations Plans

RELATED: WM 784 (Permit Application Process)

SUMMARY STATEMENT:

As established in 12 VAC 5-590-200 of the *Waterworks Regulations*, an application for a permit shall be submitted by the owner or authorized agent requesting to establish, construct, expand, modify, and/or operate a waterworks. While the *Waterworks Regulations* currently describe this as a four part process, the *Code of Virginia* (§ 32.1-172) has expanded the process to five parts. The fifth part addresses a comprehensive business plan, hereinafter called a Waterworks Business Operations Plan (WBOP), when applicable. This memo provides general guidance on requirements for WBOPS.

I. BACKGROUND

The requirement for a waterworks to complete a WBOP is established in § 32.1-172 of the *Code*, which states that “an application for a permit shall include a comprehensive business plan detailing the technical, managerial, and financial commitments to be made by the owner in order to assure that the waterworks’ performance requirements for providing the water supply will be met over the long term,” and further states that we “may require the submission of a business plan by those existing waterworks that have demonstrated significant noncompliance with the *Waterworks Regulations*.”

In addition, the *Code* allows for waiving the WBOP portion of the application if an applicant has demonstrated an acceptable history of compliance with the *Waterworks Regulations*.

Very few waterworks will be affected by our requirement to have a WBOP. Waterworks owners that are governmental entities or private companies with a history of acceptable compliance with the *Regulations* will not normally be required to provide a WBOP.

II. APPLICABILITY

Our staff must make the decision on who is and who is not required to submit a WBOP. Generally, only the following circumstance will require such a plan:

- A. **Owners of new community and new non-transient non-community waterworks that produce and wholesale drinking water** – required for the development of a new waterworks or the purchase

of an existing waterworks by a potential first-time owner of a Virginia waterworks, or an owner that has a poor compliance history with the *Waterworks Regulations*.

This decision should be made during the Preliminary Engineering phase of the application process, prior to any source site inspections. The final decision shall receive the concurrence of the Field Director. The WBOP should be prepared and submitted with the Preliminary Engineering Report.

- B. **Owners of existing community and existing non-transient non-community waterworks that produce and wholesale drinking water** – required if the existing waterworks is in significant noncompliance with the *Waterworks Regulations*.

Many waterworks that are in significant noncompliance with the *Regulations* are very small. A requirement for a WBOP may be exactly what is needed to establish sound fiscal practices, but may also cause additional financial hardship.

The requirement for a WBOP is appropriate for inclusion in many consent orders. The WBOP may be a good persuasive tool for owners that are significant non-compliers, or those on the verge of becoming significantly noncompliant and debating whether to continue as an independent waterworks.

- C. **Waterworks owners making application for a loan through the Drinking Water State Revolving Fund (DWSRF)** – required unless the applicant has demonstrated an acceptable history of compliance with the *Waterworks Regulations*.

VDH staff administering the DWSRF will determine whether a WBOP or another form of certification will be required.

- D. **Non-community waterworks owners** – The criteria above for determining if a waterworks must submit a WBOP also applies to non-community systems. Owners of both transient (TNC) and non-transient non-community (NTNC) facilities must demonstrate that they recognize themselves as public waterworks, and that a budget is in place that will cover the waterworks' expenses.

NTNC waterworks that do not produce and wholesale drinking water may submit a simplified version of the Financial Portion of the WBOP. The simplified version does not apply to NTNC waterworks that own and operate a source and treatment facilities that wholesales drinking water (e.g., water service authorities). These waterworks must complete the WBOP in its entirety.

A simplified version is available for TNC waterworks required to submit a WBOP.

III. WBOP PREPARER'S QUALIFICATIONS

In order to meet the intent and purpose of the WBOP, the plan must be prepared by skilled individuals who are knowledgeable in sound business practices as well as the complexity of waterworks business operations. Therefore, waterworks owners must have their plans prepared and submitted by any or a combination of the following:

- Certified Public Accountant (CPA)
- Licensed Professional Engineer (P.E.), or

- Other individuals with significant knowledge of waterworks operations and management, as approved by the Field Director.
- The simplified WBOP for TNCs is designed to be completed by the waterworks owner.

IV. WBOP RESOURCES AND ASSISTANCE

WBOP resources for waterworks are posted on the ODW web site at http://www.vdh.virginia.gov/drinkingwater/owners/permit_applications_wbop.htm . The web resources consist of

- a handbook for Community and Nontransient noncommunity waterworks
- companion financial worksheets for the handbook
- a simplified worksheet for TNC WBOPs

These documents are designed to be accessed and completed online, though copies can also be printed and distributed to waterworks owners to complete manually. Additionally, model WBOP documents are posted at ODWShare:\02-Committees\203-Task Teams\WBOP\WBOP Models. The models cover a variety of waterworks types and situations, and can be printed and distributed to owners seeking additional guidance on completing a business plan.

By design, the process of preparing a WBOP is intended to increase waterworks owners' awareness of their financial and managerial obligations. Consequently, staff assistance with the completion of business plans is expected to be minimal, and ODW staff shall not research or prepare business plans on behalf of owners. However, staff assistance may be needed to direct waterworks to the resource materials and forms that are appropriate to their situation. This guidance should typically be offered during preliminary engineering discussions with prospective waterworks owners.

IV. STAFF REVIEW PROCEDURES

Review of the Operations, Management, and Planning portions of the WBOP should be similar to our review of a Preliminary Engineering Report (PER) or Operations and Maintenance Manual. For the Financial portion, a plan developed by the parties identified above and meeting the financial analyses provided in the form should require only a limited review of the assumptions. The Community and Nontransient noncommunity WBOP handbook provides guidelines for analyzing financial worksheets, and describes consequences for passing or failing financial analyses included in the required WBOP submittals. The WBOP submittal form for TNCs includes a check box to indicate if the submittal is technically adequate.

Time accounting for review of WBOP submittals should be under Project Evaluation – Reports.

ODW approval will be by letter similar to PER approval. When required, a complete WBOP must be approved prior to the issuance of a Construction Permit or an Operation Permit.

END OF MEMO